

Collector of Central Excise Vs. Prashant Khosla Pneumatic Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-27-1995

Reported in : (1995)(78)ELT70Tri(Mum.)bai

Appellant : Collector of Central Excise

Respondent : Prashant Khosla Pneumatic Ltd.

Judgement :

1. There is a delay of more than four months in filing the appeal by the Revenue. Though I could have dismissed the appeal as time barred, since [no] valid reasons have been cited in the condonation application, I am taking up the appeal itself for disposal, after condoning the delay, since it is pleaded by Shri Nair, that a question of law is involved.

2. The undisputed facts are that the Respondents sent a compressor to a foreign exhibition. When it was returned, they paid the countervailing duty, since the item was exported under bond. The said compressor was received in their factory. It was subjected to reconditioning, after which it was cleared on payment of central excise duty. The Respondents claimed refund of the duty, which was rejected by the Assistant Collector, but in appeal the same was allowed by the Collector (Appeals). Hence, the Revenue have come in appeal. It was pleaded by the Ld. SDR that under Rule 173L, duty paid originally only could be refunded, which is the countervailing duty and hence, refund of this amount cannot be sanctioned by the C. Ex. authorities. Their claim for countervailing duty has already been dismissed by the Assistant Collector of Customs.

3. The compressor, which has been subjected to countervailing duty, on import, has been brought inside the factory under D-3 declaration. It has been only reconditioned and cleared. Hence, there is no requirement of payment of Central Excise duty on this CV duty paid compressor. If they have paid the Central Excise duty on clearance after reconditioning, it is an erroneous payment. Such erroneous payment of Excise duty can be refunded if the claim has been filed within the period of limitation under Section 11B of the Central Excise Act. There is no need to have recourse to Rule 173L of the Central Excise Rules.

The point of law is answered against the Collector. Hence, the appeal from the Revenue is rejected.

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